

ANTHONY W. PORTER,
Petitioner,

v.

WILLIAM MUNIZ,

Respondent.

No. C 14-5034 TEH (PR)

ORDER TO SHOW CAUSE

(Docket No. 3)

Petitioner, Anthony W. Porter, a California state prisoner, has filed a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging a judgment of conviction from the Monterey County Superior Court. He has paid the filing fee.

I

Petitioner was found guilty after a jury trial of attempted murder and related counts following his participation in a drive-by shooting. Petitioner was sentenced to 25 years but the state court granted him a new trial regarding the allegations that the crimes were committed for the benefit of a street gang and that the attempted murders were willful, deliberate, and premeditated. Rather than face retrial on the two counts, petitioner agreed to a settlement where he would serve a total of 34 years in prison. People v. Porter, No. H037619, 2013 WL 2284949 (Cal. Ct. App. May 22, 2013). The California Court of Appeal affirmed his conviction

1 and settlement. Id.

2 II

3 This Court may entertain a petition for a writ of habeas
4 corpus "in behalf of a person in custody pursuant to the judgment of
5 a State court only on the ground that he is in custody in violation
6 of the Constitution or laws or treaties of the United States." 28
7 U.S.C. § 2254(a). It shall "award the writ or issue an order
8 directing the respondent to show cause why the writ should not be
9 granted, unless it appears from the application that the applicant
10 or person detained is not entitled thereto." Id. § 2243.

11 Petitioner seeks federal habeas relief on the following
12 claims:

13 1. Trial counsel was ineffective for:

- 14 i) failing to investigate gun shot residue;
15 ii) failing to introduce exculpatory evidence of gun
16 shot residue on co-defendant Williams;
17 iii) failing to properly interview a witness and then
18 not impeaching the witness; and
19 iv) failing to present evidence of petitioner's
20 physical weakness and his alcohol blackouts;

21 2. The prosecution violated Brady v. Maryland, 373 U.S.
22 83 (1963), with respect to gun shot residue evidence;

23 3. A violation of double jeopardy;

24 4. Trial counsel was ineffective at the plea stage when
25 petitioner agreed to the settlement; and

26 5. Petitioner's plea was not knowing and intelligent.

1 copy of this Order on Petitioner.

2 3. Respondent shall file with the Court and serve on
3 Petitioner, within sixty-three (63) days of the issuance of this
4 Order, an Answer conforming in all respects to Rule 5 of the Rules
5 Governing Section 2254 Cases, showing cause why a writ of habeas
6 corpus should not be granted. Respondent shall file with the Answer
7 and serve on Petitioner a copy of all portions of the state trial
8 record that have been transcribed previously and that are relevant
9 to a determination of the issues presented by the Petition.

10 If Petitioner wishes to respond to the Answer, he shall do
11 so by filing a Traverse with the Court and serving it on Respondent
12 within twenty-eight (28) days of his receipt of the Answer.

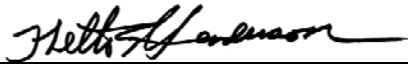
13 4. In lieu of an Answer, Respondent may file a Motion to
14 Dismiss on procedural grounds, as set forth in the Advisory
15 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.
16 If Respondent files such a motion, Petitioner shall file with the
17 Court and serve on Respondent an Opposition or Statement of
18 Non-Opposition within thirty-five (35) days of receipt of the
19 motion, and Respondent shall file with the Court and serve on
20 Petitioner a Reply within fourteen (14) days of receipt of any
21 Opposition.

22 5. Petitioner is reminded that all communications with
23 the Court must be served on Respondent by mailing a true copy of the
24 document to Respondent's counsel. Petitioner also must keep the
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1 Court and all parties informed of any change of address by filing a
2 separate document entitled "Notice of Change of Address."

3 IT IS SO ORDERED.

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5 DATED 02/17/2015



THELTON E. HENDERSON
United States District Judge

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